United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

75-1309

To be argued by
GEORGE E. WILSON

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 75-1309

UNITED STATES OF AMERICA,
Appellee,

—v.—

GEORGE GALGANO and VICTOR LEO,
a/k/a "Victor Bianco",
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES OF AMERICA

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Preliminary Statement

George Galgano and Victor Leo, a/k/a "Victor Bianco", appeal from judgments of conviction entered August 4, 1975 in the United States District Court for the Southern District of New York after a 11 day trial before the Honorable Morris E. Lasker, United States District Judge.

Indictment 75 Cr. 208, filed February 28, 1975, charged Galgano and Leo with the collection of extensions of credit by extortionate means, in violation of Title 18, United States Code, Sections 891, 894 and 2 (count one); and charged Leo with possession of a firearm during the commission of a felony, in violation of Title 18, United States Code, Sections 921(a)(3) and 924(c) (count two).

Trial began on June 4, 1975 and ended on June 18, 1975 when the jury found Galgano and Leo guilty on

count one and acquitted Leo on count two. On August 4, 1975 Judge Lasker sentenced both Galgano and Leo to 5 years imprisonment—the execution of all but six months of which was suspended—and four and one-half years probation. Each defendant remains free on bail pending appeal.

Statement of Facts

A. Synopsis

The government's evidence established that Bruno Zaffino and his nephew, Florenz DeRaffele, were engaged in the construction of apartment houses in 1968 and 1969, at which time they encountered financial difficulties partly due to DeRaffele's illness. Defendant Galgano, a real estate operator, provided to them during that period mortgage financing on a commission basis. Zaffino and DeRaffele became heavily indebted to Galgano. Galgano arranged with defendant Leo and David Grande (now deceased) to collect nearly $15,000 in debts from Zaffino and DeRaffele. On or about July 17, 1970 Galgano and Leo met Zaffino and DeRaffele in White Plains, New York. Leo took DeRaffele to the Halstead Inn in Harrison, New York where Grande tended bar. DeRaffele was held there by Galgano, Leo and Grande, until Zaffino came up with the money. Several hours later DeRaffele was rescued by his friends, Larry Perone and Richard Donahue, after a heated argument at gun-point. That night Zaffino's truck was set afire. He was later to learn from Galgano that the fire was part of the collection efforts. In the ensuing weeks Zaffino and his sister Clementine DeRaffele received numerous threatening telephone calls from Leo and Grande in which they were told to pay up or else. Zaffino was taken for a ride twice by Leo to see Grande and threatened once with a gun. Finally, because of the constant threats, Zaffino and Mrs. DeRaffele paid Galgano the money.

Both defendants testified as to their version of the events, which was in direct contradiction to that of the victims. Galgano and Leo each denied making any threats and attempted to establish that the entire story was fabricated by Zaffino in an effort to hide his shady dealings from his brothers who were in business with him.

B. The Government's Case

Bruno Zaffino and his three brothers, Vincent, Angelo and Salvatore, were in the structural steel business in New Rochelle under the name of G. Zaffino and Sons, Inc. In 1969 Zaffino nad his nephew, Florenz DeRaffele, went into several ventures in the building business. They first formed Corvair Construction and later Edgemont Builders and Park Terrace Apartments (Tr. 28).* DeRaffele ran the building businesses and Zaffino did not play an active role.

Defendant Galgano, through his company Galgano Realty, procured both construction and permanent mortgages for Zaffino and DeRaffele's apartment houses, a percentage of which he was paid as his commission. In 1969 the ventures lost a few hundred thousand dollars. Both Edgemont and Park Terrace were indebted to Galgano Realty (Tr. 32, 374, 375) in the amount of over $28,000.** These debts included both mortgage commissions; loans made by Galgano; and some bad checks. To complicate things DeRaffele became ill with encepha-

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* References to numbers preceded by "Tr" are to pages in the trial transcript; "GX" refers to Government Exhibits; and "DX" to Defense Exhibits.

** The government concedes, as it did throughout the trial (Tr. 96, 991, 1935), the validity of all debts owed by Zaffino and DeRaffele to Gagano (Tr. 77). Part of the total money repaid was in satisfaction of two default judgments totalling approximately $13,655.70 (Tr. 142), which Galgano had obtained in June or July. In addition there was owed a total of $14,910.

litus and was hospitalized for nearly three months (Tr. 33, 371). He left the hospital in early 1970. For six months thereafter, until September or October of 1970, DeRaffele had to undergo extensive therapy to correct the loss of part of his speech, a partially paralyzed hand, the loss of 30 to 40 pounds and a loss in his equilibrium (Tr. 202, 372). In the meantime, the building ventures suffered and during that six month period the businesses virtually ceased to exist (Tr. 34).

On or about July 17, 1970, as Zaffino and DeRaffele were leaving the White Plains, New York office of their attorney, Warren Silberkleit, they were met by Galgano and Leo. Galgano introduced Leo as Frank Bianco (Tr. 36, 232, 376).* Galgano told Zaffino and DeRaffele that he had sold notes of their debt (Tr. 378), to Bianco and David Grande, whom he identified as strong-arm men. Galgano told them that these men were going to get their money (Tr. 525), and that they had better pay them. At Galgano's motion, Bianco directed DeRaffele to get into a car (Tr. 39, 377) and they went to the Halstead Inn in Harrison, New York. On the way Bianco told DeRaffele that they were going to see Grande in reference to the monies that were owed (Tr. 380). At this time DeRaffele became afraid (Tr. 428) because he knew from experience what "selling notes" under these circumstances meant and he was aware of Grande's reputation as a muscle-man (Tr. 387, 526) and enforcer. He was also afraid of Bianco because of his association with Grande (Tr. 506). They arrived at around 11:30 or noon. Bianco directed DeRaffele to a table and told him to sit. Grande was tending the bar (Tr. 40).

In the meanwhile Galgano and Zaffino had gone to the Hall of Records to file some papers and thereafter each

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* In 1971 both Zaffino and DeRaffele learned that Bianco was Leo (Tr. 77, 472).

in his own car proceeded to the Halstead Inn (Tr. 381). When Zaffino arrived DeRaffele was sitting at a table. Grande then discussed the debts with Zaffino, during which time Grande displayed a revolver at the bar, pointing it at Zaffino (Tr. 53, 55, 226, 270, 382). Galgano stood nearby giggling and laughing.

DeRaffele wanted to leave, but did not because he did not think he could (Tr. 390). Zaffino, petrified with fear that he would be shot or beaten (Tr. 57), left and went to his shop to try to raise money. There he discussed the matter with his brothers (Tr. 196). Angelo Zaffino, Bruno's brother, recalled that Bruno looked "very, very nervous" (Tr. 926), and was pacing up and down in the office (Tr. 932).

After Zaffino left the Halstead, DeRaffele left with Bianco to try to borrow $5,000 from Louis Ruggiero, a liquor store owner in White Plains who lent money (Tr. 391). While Bianco waited outside in the car, DeRaffele entered the store but was unsuccessful in borrowing the money. DeRaffele was then driven back to Halstead Inn.

In the meantime, Larry Perone, a long time friend of Florenz DeRaffele, went to the Zaffino's steel shop when DeRaffele failed to meet him after work and spoke with Bruno Zaffino (Tr. 56). Perone, accompanied by Richard Donahue,* then went to the Halstead Inn to pick up DeRaffele (Tr. 638). Upon arriving they saw Leo

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* Both Perone and Donahue had made statements before trial which failed to disclose the argument and gun incident in order to avoid "being involved" as witnesses. However, when it became evident that they would have to testify, they recanted and told the truth (Tr. 648, 722, 768, 814). At trial each was confronted with his previous statements, which had been given to an Assistant United States Attorney and recorded by a defense investigator (DX GD), and cross-examined at great length.

and Grande with DeRaffele, who was sitting at a table and who appeared to be very nervous, pale, upset, and shaky (Tr. 764). Galgano was also present. Perone and DeRaffele briefly conferred in the men's room, where DeRaffele told Perone he could not leave because he owed some money (Tr. 394, 503, 656). Perone told DeRaffele that they were going to take him home (Tr. 640) and then announced that to the others. Leo said DeRaffele was not leaving until Bruno came up with the money (Tr. 758). An argument began between Donahue and both Galgano and Leo (Tr. 760). Leo suggested they all go into the kitchen and DeRaffele, Leo, Galgano, Perone and Donahue did so. The argument continued (Tr. 724-725). As Leo insisted that DeRaffele was not going until they got their money and Donahue insisted they were, Grande entered, pulled out a gun, stuck it in Donahue's chest (Tr. 396, 762) and insisted they were not (Tr. 644). Donahue stuck his finger in the end of the gun and told Grande that he was going to "shove it up his ass if he didn't put it away" (Tr. 762, 802). Grande put the gun away after Leo told him to do so. Donahue told Leo they would "get up the ten grand" and give it to him. Donahue's remark was based on Perone's previous statement to him that Bruno was out trying to come up with the money (Tr. 808). Leo said "you've got a week" (Tr. 762). Shortly thereafter (4:30 or 5:00 P.M.) (Tr. 455), Perone and Donahue left with DeRaffele who was still shaking. They went to Perone's home where DeRaffele stayed for four or five weeks (Tr. 45, 397, 661).

Clementine DeRaffele (who was 68 at the time), was informed by Perone by telephone that some of Galgano's men had been keeping her son Florenz at gun point at the Halstead Inn because he owed some money (Tr. 566, 605, 607). She informed her brother Bruno that her son had been released (Tr. 196). Knowing nothing about her brother and son's debts (Tr. 545)—having had nothing to do with Edgemont Builders or Park Terrace Realty

(Tr. 61)—Mrs. DeRaffele called Galgano and asked him why he had kept her son at the Inn. Galgano told her it was out of his hands and that he had sold the notes at a great loss to some other men. He suggested that they come to her house to discuss the matter (Tr. 542). Mrs. DeRaffele reluctantly consented and at about 7:00 or 8:00 (Tr. 542) Galgano, Leo and Grande arrived. Grande told her that he had bought the debts and he wanted his money (Tr. 543). Mrs. DeRaffele said they did not have the money and suggested installments—the first to be due in a month and the balance the following month (Tr. 544). They agreed and left.

That night, from 8:00 P.M. until 4:00 A.M. Zaffino received threatening telephone calls from Grande and Bianco. Zaffino was told to come across with the money or "they would blow our God damn heads off", and "blow the shop off the face of the map" (Tr. 60, 292). The next morning when he went to work, Zaffino discovered that someone had set fire to his truck which had been parked in his front yard. The records of the New Rochelle Fire Department (GX 17) show that the fire occurred prior to 2:16 A.M. on July 17, 1970 (Tr. 357). Several days later Galgano told Zaffino that *they* had set his truck on fire; that *they* would blow his shop off the face of the map; and that he and DeRaffele had better pay up because "these men" mean business (Tr. 58).

The telephone calls from Bianco and Grande (Tr. 281) continued every night all night long for a few weeks. As a result both Zaffino and his wife were "scared to death" (Tr. 61). About a week after the first meeting, Bianco came to Zaffino's Port Chester jobsite where he picked him up and, took him to see Grande. As a result of their conversation Zaffino was "petrified and frightened to death". Upon their return Bianco pulled out a gun in the car and fired at Zaffino's feet (Tr. 63, 305). Zaffino became "scared to death" (Tr. 64). The trip was later repeated (Tr. 62). A few days after the shooting, as Zaffino was

driving home from work and stopped for a traffic light on Weyman Avenue in New Rochelle, New York, the car doors on each side were suddenly flung open by Grande and Bianco, who then ordered Zaffino to the side of the road. Grande spoke with Zaffino, which further intensified Zaffino's fear.

Within the week following the meeting Clementine also began to receive telephone calls at all hours of the night and early morning from either Grande or Bianco (Tr. 585), demanding immediate payment of the money (Tr. 550). The caller directed his threats to her brothers (Tr. 588) by telling her she would have to get it "or else" or "you know what we will do" (Tr. 549) and "We're already over at your brother Bruno's house" (Tr. 589). Mrs. DeRaffele lost much sleep from being up all one night and was even forced to spend nights on a couch so as not to alarm her husband (Tr. 546, 552). She was petrified that either she or her family would be harmed (Tr. 551) and knew that her son was just recovering from encephalitus (Tr. 552). First Mrs. DeRaffele tried to borrow money on her house but could not. Finally, she obtained the money from Bruno and the other brothers (Tr. 560, 592; DX A, B), after telling them she could not stand the threatening calls (Tr. 562). Clementine's brother Angelo saw his sister and said that she was a "nervous wreck"; "very, very nervous"; that her voice quivered (Tr. 928); and that at one time she was crying (Tr. 937). When Clementine obtained the money she called Galgano and told him she had $5,000. Galgano and Leo came to her house for the check. Galgano told her to make the check (GX 1) out to "Galgano Realty Company" (Tr. 555, 595).*

* Perone testified that about a week after the Halstead Inn incident he took a $5,000 check from Mrs. DeRaffele to Grande at the Halstead Inn (Tr. 662, 727, 728). Mrs. DeRaffele did not recall this (Tr. 654). That amount added to the checks she recalls giving Galgano totals $14,910, the exact amount of the debts not covered by judgments or mortgages.

The threats stopped temporarily, but started up again several days later (Tr. 67, 554) and went on for about two weeks whereupon a payment schedule was worked out by Zaffino and his sister to pay the remaining debts (Tr. 68). Mrs. DeRaffele, still in a state of fright (Tr. 558), made another payment of $4,910 in September to Galgano at her home. Present were DeRaffele, Perone, Galgano and Leo (Tr. 530, 557). Once again the check (GX 2) was made payable to Galgano Realty (Tr. 558). The back of the $4,910 check (GX 2) bears an acknowledgment that it constituted final payment for a total of $14,910 in debts owed Galgano. In return Zaffino received back various checks totaling $6,510 earlier drawn by Edgemont Builders and payable to Galgano, but uncollected because of insufficient funds (Tr. 74; GX 12-16), and a cancelled $8,400 personal check which evidenced a loan from Galgano's wife.*

Zaffino also began making monthly payments to Galgano (GX 3-11). All checks in payment of the debt (GX 1-11) were made out to and endorsed by Galgano Realty Corp. (Tr. 72). When Zaffino asked why the checks were being made out to Galgano Realty if Galgano sold the debts Galgano responded that "[t]hat's the way it has to be, just make it out to Galgano Realty" (Tr. 76). No money was ever paid by Zaffino to Bianco or Grande (Tr. 77). After the final payment was made to Galgano, Zaffino never again dealt with him on either a business or a social basis (Tr. 79, 165).

The only time DeRaffele saw Galgano or Bianco thereafter, other than by chance, was four or five weeks later when he went to his mother's house to be with her when she gave Galgano and Bianco a check (Tr. 476, 530). He

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* See footnote ** at page 3.

had no knowledge of any other arrangements for repayment (Tr. 399, 462).

Following the repayment, Zaffino continued to be frightened. He never went to the police or F.B.I. until November of 1971 (Tr. 194) and was nervous when interviewed by the F.B.I. Mrs. DeRaffele never went to any law enforcement agency because she was afraid that something might happen to her family (Tr. 635). Both had to be subpoenaed to ensure their appearance at the trial because they were afraid to come voluntarily (Tr. 80).

Special Agent William J. Walsh of the F.B.I. began the investigation of this case in November of 1971. After several attempts over a couple of weeks he contacted Bruno Zaffino and interviewed him. Zaffino was reluctant to tell Walsh the full story because he thought it would start all the problems all over again (Tr. 957). When Walsh interviewed Florenz DeRaffele, the entire family was present. DeRaffele would stutter and pace back and forth. Clementine DeRaffele was nervous and told Walsh she was afraid that something might happen to her family and start the same threats again if "this" got out (Tr. 961).

Walsh arrested Galgano on March 3, 1975. During the processing Galgano stated he had discounted his loans to Grande and Leo and denied using them to collect on his loans or making any threats himself. Galgano said the checks in repayment of the loans were made out to Galgano Realty at the suggestion of Mrs. DeRaffele (Tr. 967, 968).

Special Agent Martin K. Riggen of the F.B.I. was present when Leo surrendered on March 7, 1975. During the interview that followed Leo denied ever having used the name Victor or Vic Bianco (Tr. 1012).

C. The Defense Case *

George Galgano first met Zaffino and DeRaffele in 1968 in connection with the first of numerous real estate transactions he had with them—which transactions he testified to in detail (Tr. 1137-1141).**

With the onset of DeRaffele's illness around the end of 1969 business transactions with Zaffino and DeRaffele came to an end (Tr. 1144). At that time outstanding debts included two mortgages, approximately $2,200 in checks, a note for $10,000, an $8,400 loan and several dishonored checks for commissions which totalled $6,510 (Tr. 1148-1149). After several unsuccessful discussions with Zaffino and DeRaffele concerning repayment (Tr. 1151-1152), Galgano began efforts to collect his debts. His lawyer Fernando Castiglia, whom he had instructed to institute suit on the debts, advised him it might take up to a year to get his money (Tr. 1156). Galgano then attempted to sell his commercial paper and asked Grande, a bartender at either Sandy's Lantern Inn or the Halstead Inn, whether he knew anyone who would want to buy notes. Grande purchased $15,000 worth of checks (which apparently included the $8,400 check and the $6,510 worth of worthless commission checks), for $3,000 in cash (Tr. 1159). This transaction, according to Galgano, was consumated by an agreement in which

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* The defense case consisted of, in addition to the testimony of both defendants, testimony from several witnesses to establish the fact of Galgano's various business dealings with and legal actions against Bruno Zaffino, Florenz DeRaffele and their defunct companies. Since the fact of these transactions was not in dispute, and since the testimony of these other witnesses did not seriously contradict that of the victims, only that part of the defense case which relates to the factually disputed issues decided by the jury is summarized here.

** The existence and nature of these transactions was conceded by the government (Tr. 1153).

Galgano acknowledged receipt of the cash and promised to do anything Grande needed in order to sue on the notes in the name of Galgano's corporation. This document was allegedly lost together with other Galgano's papers (Tr. 1161).

Galgano spoke with DeRaffele in June about a lawsuit begun by Castiglia and told him about selling the checks (Tr. 1163). Lated in July, at a meeting at Warren Silberkleit's* office, which was requested by either Zaffino or DeRaffele (Tr. 1166), the various debts and lawsuits were discussed and an agreement for repayment reached. Zaffino offered to pay Galgano three or five thousand dollars if he would discontinue the lawsuit against G. Zaffino & Sons (Tr. 1173). Galgano then told Zaffino about selling the checks to Grande at which time Zaffino allegedly agreed to raise the $23,000, with $5,000 to be paid within a week. Zaffino and DeRaffele asked if they could meet Grande and Galgano called him. On the way out of the building they met Leo, who had been asked by Grande to bring DeRaffele to the Halstead Inn (Tr. 1267, 1555). Galgano asked Leo to take DeRaffele back to the Halstead Inn while he and Zaffino filed some papers. Leo did so (Tr. 1174). On the way DeRaffele asked Leo's name and Leo responded "Frank Bianco" but later at the Halstead told DeRaffele his name was Vic Leo (Tr. 1543).** Leo explained that he used different names in this business as a salesman (Tr. 1540), denying that he ever did it to conceal his identity (Tr. 1541). Upon arriving at the Halstead Inn, Leo introduced DeRaffele to Grande after which they sat down and had lunch.

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* The attorney for G. Zaffino Brothers Inc.

** It was never satisfactorily explained why DeRaffele could not have waited and ridden with Zaffino. Galgano denied any recollection of employing Grande or Leo for any reason let alone to collect a debt (Tr. 1254, 1289, 1304, 1306, 1310).

Galgano and Zaffino went to the County Clerk's Office where Zaffino told him he did not think he could raise the money (Tr. 1177). They both went to the Halstead Inn. Upon arriving at the Halstead around 1:00 P.M. Galgano observed DeRaffele sitting with Leo at a table towards the rear (Tr. 1182). Both Galgano and Leo saw Zaffino standing at the bar but did not speak to him. Galgano said hello to Grande but denied seeing him pull a gun (Tr. 1273). Galgano told DeRaffele that Zaffino was breaking the agreement and therefore the lawsuit would continue (Tr. 1183, 1543). About one-half hour later Galgano left the Inn.

During the time Galgano talked buiness with DeRaffele, Leo sat at another table but later rejoined him. DeRaffele asked Leo if he would take him to see someone in White Plain so he could borrow $5,000. Leo reluctantly did so and dropped DeRaffele off two stores away, waited ten or fifteen minutes and then drove DeRaffele back to the Halstead Inn (Tr. 1545). After returning DeRaffele to the Halstead Inn, Leo left to call on an account (Tr. 1546). Leo never saw Zaffino again until the trial.

Several days later Galgano received a telephone call from Mrs. DeRaffele (Tr. 1186), who had "gotten herself involved in the paying back of the debt" (Tr. 1187). Mrs. DeRaffele could not understand how she could owe two people and asked who Grande was and requested to see Grande that night. Galgano called Grande and arranged a meeting at Mrs. DeRaffele's home at 7:00 P.M. (Tr. 1189). Galgano arrived and was met by Grande and Leo, who happened to be with Grande when the latter said he had to stop. They went inside and were received by Mrs. DeRaffele and her son Florenz (Tr. 1191, 1547).

Grande and Galgano attempted to explain the concept of selling commercial paper and that the notes had been

sold to Grande, but Mrs. DeRaffele failed to understand (Tr. 1192, 1193, 1549). Leo discussed only his old war injuries with Mrs. DeRaffele. After the meeting Galgano never again returned to Mrs. DeRaffele's home (Tr. 1200). Leo never saw her again and only saw DeRaffele by accident in November of 1971 (Tr. 1551).

A week or ten days later Mrs. DeRaffele called Galgano and hold him she was paying $5,000 and that she was making the check out to Galgano (Tr. 1195). She persisted in spite of his attempts to have her write the check to Grande. Galgano finally consented to accept the $5,000 check in the name of Galgano Realty Corp. (GX 1), which he received not from Mrs. DeRaffele at her home, but from Grande who sent it to him for cashing. Galgano deposited the check in his account, waited for it to clear and gave Grande his $5,000. A check for $4,910 written by Mrs. DeRaffele in September was delivered to Grande who repeated the procedure (Tr. 1198-1199). Galgano denied keeping any of the proceeds of either check (Tr. 1199), but asserted he had no bank records because allegedly they had been lost during his move to Florida.*

In the meantime Castiglia had obtained two default judgments and was preparing to have them executed by levying on G. Zaffino & Sons' bank accounts (Tr. 1202). Zaffino, in a meeting with Galgano at Galgano's home, proposed a settlement by installment payments. A $3,000 lump sum in cash or certified check was paid to be followed by weekly payments (Tr. 1204). The $3,000 check (GX 3) was delivered by Zaffino to Galgano and $500 was paid weekly (GX 4, 9) by check to Castiglia. A check for $1,500 (GX 10) accounted for 3 payments and

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* Galgano was unable to remember what banks he had used (Tr. 1220). Later the names of all of his banks were entered into the record by stipulation.

a final check (the result of a second levy on Zaffino's bank accounts), for $6,347.13 (GX 11) accounted for the final payments in satisfaction of both judgments.

Thereafter in 1971 Galgano claimed, and Zaffino denied (Tr. 79, 165), that Zaffino asked him to assist in getting an increase on a mortgage (Tr. 1213).

Galgano denied every significant fact testified to by government witnesses (Tr. 1274 *et seq.*). He denied ever seeing Mrs. DeRaffele more than once (Tr. 1215); seeing Donahue at any time before trial; being in the Halstead Inn kitchen with Perone or Donahue; and threatening Bruno Zaffino. He also denied any knowledge of the arson committed on Zaffno's truck (Tr. 1217). Galgano was unable to state what records he took to Florida (Tr. 1234); what moving company moved him (Tr. 1236); what books and records, if any, were lost (Tr. 1237); or even whether they were lost on the move to Florida in October of 1973 (Tr. 1522), or the move back to New York in January or February of 1975 (Tr. 1238, 1278). He admitted that it was possible he could have lost his books and records while in Florida and was unable to state what records remained (Tr. 1240), even though he previously had testified he had no bank records pertaining to the alleged Grande transaction (Tr. 1200). Galgano made no claims against any moving company for any losses at any time (Tr. 1245) and, in spite of his crystal-clear recollection of the events in 1970, was even unable to recall what, if anything, he lost moving back to New York in January or February of 1975 (Tr. 1244).

Leo specifically denied ever making threatening calls to Mrs. DeRaffele (Tr. 1551); setting fire to Zaffino's truck (Tr. 1553); owning a gun (Tr. 1553); firing a gun in Zaffino's presence (Tr. 1572); working with or

employing David Grande; or working for Galgano (Tr. 1572). Leo also denied ever picking Zaffino up at work and taking him to the Halstead Inn; and denied that he, along with Grande, had ever way-laid Zaffino at a traffic light (Tr. 1573). He also denied that the events testified to by Donahue, Perone and DeRaffele ever happened (Tr. 1574).

Doctor Alan H. Bruckheim, M.D., testified that because of an old hand injury to Leo's right hand, he was incapable of firing a pistol with that hand (Tr. 1443). However, he was unable to state that Leo could not fire a gun with his left hand (Tr. 1456).

D. Government Rebuttal

Warren Silberkleit, an attorney for 24 years, knew Bruno Zaffino in business, as well as socially, for 20 years. Additionally, Silberkleit is the attorney for G. Zaffino & Sons Iron Works, Inc. With respect to Zaffino's truthfulness and veracity Silberkleit testified:

> "I don't think I have ever heard that man tell a lie. As far as integrity is concerned, I don't know anyone of higher integrity" (Tr. 1609); and that ". . . he is honest almost to a deporable situation" (Tr. 1631).

Based on his dealings both socially and in business with at least 100 suppliers, fabricators, subcontractors, and other people in the steel business (including Zaffino's competitors), Silberkleit testified that Zaffino's reputation in the industry was that Zaffino's word could be relied upon (Tr. 1613).

ARGUMENT

POINT I

Galgano and Leo were not denied due process of law by the pre-indictment delay.

Galgano and Leo challenge the correctness of Judge Lasker's denial of their motions to dismiss the prosecution on the ground of pre-indictment delay. They assert that by reason of the delay they suffered real and substantial prejudice and were thereby denied due process of law. The assertion is without merit. The pre-indictment delay was neither a device of the government to gain tactical advantage, nor did it result in any proven, much less substantial, prejudice to defendants.

A. Pre-trial proceedings

Both defendants moved before trial to dismiss the indictment on the ground of alleged prejudicial pre-indictment delay. An evidentiary hearing on that motion, held on May 13 and 14, 1975, established the following.

In 1971 William Walsh, a Special Agent of the Federal Bureau of Investigation for 32 years, was assigned to the White Plains, New York resident office of the F.B.I. In September, 1971 Walsh began the investigation which led ultimately to both the indictment herein and one other. That month Walsh received a tip from an informant that Bruno Zaffino, his sister, Clementine DeRaffele, and her son, Florenz DeRaffele, had been the victims of loansharking practices and threats (H. 123).* The informant

* Reference to numbers preceded by "H." are to pages in the transcript of the hearing of May 13 and 14, 1975.

steered Walsh to Louis Ruggiero,* a liquor salesman who told Walsh that Zaffino had been terrorized. Ruggiero also told Walsh that on one occasion Florenz DeRaffele had run into Ruggiero's store and tried to borrow $5,000 from him; that on that occasion, according to DeRaffele, someone was waiting for DeRaffele in a nearby car who was really on his back and was trying to hurt him (H. 126, 164). Ruggiero said that, nonetheless, he refused to lend DeRaffele any money (H. 126). Ruggiero stated he was never present during any conversation or meeting between the defendants and their victims and had no first-hand knowledge of their business dealings (H. 163).

After several unsuccessful attempts, Walsh finally interviewed Zaffino in early November of 1971 (H. 122). Zaffino confirmed the substance of what Ruggiero had earlier told Walsh (H. 127-128). A few weeks later he interviewed DeRaffele and his mother who confirmed and elaborated upon what Walsh had heard up to that time (H. 128-129). Thereafter Walsh began gathering documentary evidence and filed his first report on January 5, 1972 (H. 129-13).

On May 23, 1972 Walsh first discussed the case with Assistant United States Attorney Elliot Sagor, who had been assigned the case in early January of 1972 (H. 16). At that time Sagor was involved in the prosecution of a large case with another Assistant United States Attorney (H. 42, 133, 137). At various times between January of 1972 and March of 1973, when the case was reassigned, Sagor reviewed the file, read the investigative reports, met with an Assistant District Attorney in Westchester County, and did legal research on extortionate credit transactions. Sagor felt the case was not yet ready for presentation to the grand jury and that further investigation was needed (H. 16-18). Specifically, Sagor wanted to

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* Ruggiero was murdered by robbers in July of 1974 (H. 162).

establish that Leo and the invidual calling himself Bianco were one and the same and that the victim-witnesses could make the identification (H. 155-156); and Sagor wanted to obtain records to establish the exact amount of money owed by the victims of the extortionate collection practices (H. 35). Sagor felt that in an extortionate credit transaction case the victim-witnesses usually begin to equivocate because of fear; and that because of the defendants' criminal background and the seriousness of the case the matter would surely go to trial (H. 47). Sagor met with Walsh from time to time (H. 34) and in general instructed him to find more witnesses and get more documents (H. 38, 50). As a result the amount of evidence increased (H. 52).

In March, 1973 Assistant United States Attorney Peter L. Truebner was assigned to the case. Sagor had advised Truebner that it was very important to firm up the testimony of the witnesses and get the loan transactions straightened out (H. 48). In the summer of 1973 Truebner interviewed Zaffino and was not satisfied with the latter's recollections (H. 78, 101). He asked the F.B.I. to compartmentalize what had transpired, *i.e.*, the transactions involved, the evidence of the loan and methods used to collect it (H. 67, 81, 140, 165). During this time Florenz DeRaffele had a relapse of encephalitus. In September, 1973 defendant Leo contacted Truebner and they discussed his exposure as a potential defendant (H. 67).

Between September and December of 1973, Truebner, in addition to other matters, participated in three trials (H. 84). Walsh spent a month in Florida on official business and was handling about 45 other investigations (H. 143).

In December, 1973 or January, 1974, evidence of Leo's participation in a bank fraud was discovered.* Truebner devoted most of his energies to the new aspect of the investigation (H. 68), which involved as well possible criminal conduct on the part of a bank officer (H. 89). In addition to asking Walsh to chart the loan transactions, Truebner asked him to interview Zaffino's attorney, Warren Silberkleit, with a view toward obtaining additional documents (H. 69, 83).

On July 1, 1974, when Truebner was preparing to leave the Office of the United States Attorney, he reassigned the instant matter to Assistant United States Attorney George E. Wilson (H. 86, 146). Wilson received a combined file which included both the loan-sharking and the bank fraud investigations (H. 169). When he first received that file Wilson had other matters pending, including an extensive investigation involving the Small Business Administration. He made a preliminary review (H. 176) and thereafter assigned it a priority because of relative age and his awareness that the investigation had to be moved along to completion. The file, along with six other case files, was kept on top of his desk.

In September or October, 1974, Agent Walsh first spoke with Wilson who told him that he had some questions about the case and would try to present it to a grand jury in November (H. 147). On several occasions thereafter, Walsh and Wilson discussed the case, but Wilson was very busy (H. 47) and the case was not presented to the grand jury that fall (H. 171).

In January, 1975 Wilson determined that time had to be made for the case. He met with Walsh in January

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* This lead resulted in Leo's indictment and conviction after a jury trial for a violation of Title 18, United States Code, Section 1014 (75 Cr. 207). His appeal of that conviction is presently pending.

and February, in preparation for presentation of the matter to the grand jury (H. 148), and directed him to conduct certain further investigation, most of which concerned the bank fraud charge (H. 171). In February, grand jury subpoenas concerning both cases were issued. It was necessary to subpoena even the victims, who were afraid to come to the United States Attorney's Office. Several witnesses were interviewed by Wilson, who obtained additional facts (H. 157, 184) and, for a time, considered adding additional defendants (H. 174). Some witnesses, including Walsh, appeared before the grand jury (H. 151, 17), where both charges were presented. Two separate indictments were voted on February 28, 1975 (H. 173), thirty-seven months after the case was first received by the United States Attorney's office.*

At the conclusion of the hearing, after reading the grand jury testimony of Zaffino, both DeRaffeles, Walsh, the statements that the F.B.I. had taken from each, as well as the F.B.I. report file, the court found no evidence of prejudice to the defendants or that the pre-indictment delay was an intentional device of the government designed to gain tactical advantage over the defendants (H. 205). The motion was denied, with leave to defendants to renew at the end of trial on a showing of actual prejudice (*id.*).

B. The pre-indictment delay was not the product of prosecutorial misconduct nor did it result in actual prejudice to defendants.

The indictment herein was clearly returned within the five year period provided for by the statute of limitations. Accordingly, the burden was on Galgano and Leo

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* The second indictment, 75 Cr. 207, names only Leo and charges him with a fraud on a bank in violation of 18 U.S.C. § 1014.

to establish that the delay was the product of prosecutorial misconduct *and* so impaired their capacity to prepare a defense as to amount to a denial of due process. *United States* v. *Marion*, 404 U.S. 307 (1971); *United States* v. *Frank*, Dkt. No. 74-2639 (2d Cir. June 27, 1975); *United States* v. *Ferrera*, 458 F.2d 868, 875 (2d Cir.), *cert. denied*, 408 U.S. 931 (1972); *United States* v. *Capaldo*, 402 F.2d 821, 823 (2d Cir. 1968), *cert. denied*, 394 U.S. 989 (1969). As the Supreme Court said in *Marion*:

> "The Due Process Clause of the Fifth Amendment would require dismissal of the indictment if it were shown at trial that the pre-indictment delay in this case caused *substantial prejudice* to appellees' rights to a fair trial *and* that the delay was an *intentional device* to gain tactical advantage over the accused." 404 U.S. at 324 (emphasis supplied).

Here Judge Lasker found both after the evidentiary hearing and trial that Galgano and Leo had failed to establish either, much less both, of the required predicates for relief. His findings in this respect must stand unless "clearly erroneous." *United States* v. *Jackson*, 504 F.2d 337, 341 (8th Cir. 1974), *cert. denied*, 420 U.S. 964 (1975).

Judge Lasker's findings were amply supported by the record. There was simply no evidence whatever that the delay was purposeful and designed by the prosecution to secure a tactical advantage over the defendants. *See United States* v. *Brown*, 511 F.2d 920, 923 (2d Cir. 1975). Moreover, the evidence clearly showed that the government was neither careless nor reckless. Progress was made throughout the investigation and additional evidence was gathered as the case was passed along to each Assistant. Indeed, additional evidence was discovered even just prior to presenting the matter to the

grand jury. Furthermore, during the latter stages of the investigation other potential defendants were considered and, upon further investigation, exonerated. *See United States* v. *Feinberg*, 383 F.2d 60, 64-65 (2d Cir. 1967), *cert. denied*, 389 U.S. 1044 (1968); and during the course of the investigation a separate bank fraud offense by Leo was uncovered, for which Leo was separately indicted and subsequently convicted. *See United States* v. *DeMasi*, 445 F.2d 251, 255 (2d Cir.), *cert. denied*, 404 U.S. 882 (1971).

While admittedly the trial court found at the hearing's end that there were long periods during the investigation when no action was taken, it also found that when the government was pursuing the investigation, it did so "assiduously" (H. 205). In investigating these extortionate means to collect extensions of credit, the prosecution was required to unravel a series of commercial credit transactions and elicit evidence from frightened and reluctant witnesses, some of whom eventually recanted earlier untruthful versions of events. *Cf. United States* v. *Librach*, 520 F.2d 550, 555 (8th Cir. 1975). The prosecution did so successfully—obtaining two separate indictments—in little more than three years after first receiving the matter for investigation. The fact that there were periods of inactivity during that investigation, while busy prosecutors turned to other matters, hardly affords grounds for relief. We know of no authority for such a proposition and defendants have cited none.

Defendants' claims of actual prejudice are equally unpersuasive. Their defense was impaired, they assert, because during the period of delay their memories dimmed; and because Louis Ruggiero—who assertedly might have been a helpful witness—died. Additionally, Galgano asserts that during that period he lost various business and banking documents which would have corroborated his version of the facts. These claims were rejected by Judge

Lasker after he had heard and carefully reviewed the evidence adduced at trial (Tr. 1672-1675).

First, Judge Lasker rejected defendants' speculative and naked assertion that Louis Ruggiero's testimony *might* have been helpful to them. He correctly noted that the testimony of Louis Ruggiero would not have been material and, in any event, would have served to corroborate the government's case and not defendants' (Tr. 1672-1675).

Second, he rejected the assertion of Galgano and Leo that their memories of the events in question had dimmed, correctly noting that both Galgano and Leo seemed to recall the events in issue with at least as much clarity as the complaining witnesses, if not more.* The detail with which each of the witnesses testified (including Galgano and Leo) belies any notion of prejudice due to the dimming of memory. *See United States* v. *Foddrell*, Dkt. No. 75-1048 (2d Cir. July 28, 1975), Slip op. 5161, 5163.

Finally, Judge Lasker rejected Galgano's claim of prejudice bottomed on his alleged loss of documentary evidence. In doing so Judge Lasker correctly noted that the central feature of the case was the direct testimony and credibility of the witnesses. The bulk of the supposedly lost documentary evidence pertained to the existence and nature of the underlying debts—facts which were never disputed by the government. Nor did the government dispute that Galgano had instituted legal actions to collect at least some of those debts. The solely disputed material issue was whether Galgano and Leo, as aided by Grande, had employed threats to collect repayment of the debts. On that issue the alleged documentary evidence was unimportant and the trial court so found (Tr. 1673). Moreover, copies of every bank record which were allegedly lost by Galgano were obtainable from his bank's micro-

* The versions offered by Galgano and Leo interlock with perfect precision in every detail.

film record. None was ever presented. The only other document supposedly lost was the receipt allegedly given by Galgano to Grande upon the former's alleged sale of the debts to the latter. Even assuming, but not conceding, the document's existence,* it was of little or no relevance since the material issue of the case was the existence of threats and not of a business relationship. In short, the resolution of the material and disputed issue of defendants' use of extortionate collection practices was "reduce[d] primarily to a test of credibility between" the victim-witnesses and defendants. *United States* v. *Librach*, *supra*, 520 F.2d at 555. As such, the alleged loss of documents could in no way have substantially prejudiced Galgano.

Finally, we note in closing that Leo's claims, at least, suffer from the additional, fundamental defect that by reason of his communications with Assistant United States Attorney Truebner during the early stages of the challenged investigation he was provided with "notice sufficient to alert him to the importance of preparing a defense" to potential, prospective criminal charges. *United States* v. *Feldman*, 425 F.2d 688, 692 (3d Cir. 1970). His claim now of prejudice is unavailing for the foregoing reason alone.

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* Galgano's assertion that he had lost various documents of importance to the trial was supported by nothing more than his own word, which at best was confused and self-contradictory. See, *supra*, p. 15.

POINT II

The evidence of guilt was overwhelming.

Leo raises several other issues in his attempt to dispel the overwhelming evidence against him. None has any merit whatever.

Giving due weight to the jury's right to determine issues of credibility, the evidence adduced at trial was more than sufficient to warrant a finding by twelve reasonable jurors that both defendants were guilty beyond a reasonable doubt. See *United States* v. *Frank*, 494 F.2d 145, 153 (2d Cir.), *cert. denied*, 419 U.S. 828 (1974).

The defense was based on the theory that Bruno Zaffino was an unabashed liar who had cheated both his creditors and his brothers (Tr. 97), and had concocted the entire, alleged incident of extortion to cover up from his brothers his abuse of the assets and credit of the family business (Tr. 98). The defense was rebutted in its making, however, as uncontradicted testimony established that Bruno had had his brothers' permission to use the credit of G. Zaffino & Sons (Tr. 101-104); and that his brothers had not forced him out of the family business or even threatened to do so (Tr. 131). Moreover, in an attempt to repay the losses suffered by his brothers because of the failure of Bruno and Florenz' projects, Bruno transferred his interest (25%) in G. Zaffino & Sons Iron Works to his brothers on February 23, 1970 (Tr. 1390), nearly *five months* prior to the events of this case. The government, of course, continually conceded the existence of business relationships between the defendants and the victims, and the resulting legitimate debts. Accordingly, the sole issue was whether Galgano and Leo had made or caused to be made threats to their victims, or any of them, in connection with the collection of those debts. The resolution of that issue turned almost exclusively on a finding of whether it was the victim-witnesses or the defendants who were telling the truth. Given that fact, it cannot seri-

ously be argued that the jury's verdicts rested on legally insufficient evidence.*

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* The remaining issues raised by Leo are easily disposed of. The court was well within its discretion in admitting the testimony of Clementine DeRaffele concerning the threatening telephone calls. *United States* v. *Bernett*, 495 F.2d 943, 971 (D.C. Cir. 1974). Mrs. DeRaffele received the calls threatening her and her family with harm—unless the debts to Galgano were repaid—at approximately the same time that her brother, Bruno Zaffino, received nearly identical threatening calls from Grande and Leo. It is settled that the identity of a caller may be established by circumstancial evidence as well as by direct recognition of the person calling. *United States* v. *Alper*, 449 F.2d 1223, 1229 (3rd Cir. 1971), *cert. denied sub nom. Greenberg* v. *United States*, 405 U.S. 988 (1972).

It was clearly established at trial here that Grande (unindicted because he was killed in 1971) was an accomplice in an illicit joint venture which included Galgano and Leo. *United States* v. *Geaney*, 417 F.2d 1116, 1119 (2d Cir. 1969), *cert. denied sub nom. Lynch* v. *United States*, 397 U.S. 1028 (1970). Grande's acts and declarations were therefore admissible against Galgano and Leo. *United States* v. *Olweiss*, 138 F.2d 798, 800 (2d Cir. 1943), *cert. denied*, 321 U.S. 744 (1944). Accordingly, the jury was entitled to infer that either Grande or Leo made the telephone calls to Clementine DeRaffele. In any event, evidence of the contents of those calls, and Mrs. DeRaffele's actions and state of mind as the result thereof, was highly relevant, *United States* v. *Zito*, 467 F.2d 1401, 1404 (2d Cir. 1972), since the states of mind of the victims was an element of the crime to be proved by the prosecution. *United States* v. *De Carlo*, 458 F.2d 358 (3d Cir.), *cert. denied*, 409 U.S. 843 (1972); *United States* v. *De Lutro*, 435 F.2d 255 (2d Cir. 1970), *cert. denied*, 402 U.S. 983 (1971).

Finally the testimony by Florenz DeRaffele of her knowledge of Grande's reputation as an enforcer was properly admitted, given the abundant evidence of Grande's role in the extortionate collection process and the prosecution's obligation to prove the fearful state of mind of the victim-witnesses.

CONCLUSION

The judgments of conviction should be affirmed.

Respectfully submitted,

THOMAS J. CAHILL,
United States Attorney for the Southern District of New York, Attorney for the United States of America.

GEORGE E. WILSON,
JOHN C. SABETTA,
Assistant United States Attorneys, of Counsel.

Form 280 A - Affidavit of Service by Mail

AFFIDAVIT OF MAILING

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

Alice Prokopik, being duly sworn, deposes and says that she is employed in the office of the United States Attorney for the Southern District of New York.

That on the 13th day of November, 1975, she served a copy of the within Appeal Brief by placing the same in a properly postpaid franked envelope addressed:

Legal Aid Society
United States Courthouse
Foley Square
New York, New York 10007

Attn: Phylis Skloot Bamberger, Esq.

Garner & Kreinces, Esq.
107 Northern Boulevard
Great Neck, New York 11021

Attn: Leonard Kreinces, Esq.

And deponent further says that s he sealed the said envelope and placed the same in the mail drop for mailing in the United States Courthouse, Foley Square, Borough of Manhattan, City of New York.

Alice Prokopik

Sworn to before me this
13th day of November 1975
Lynwood Hayes

LYNWOOD HAYES
Notary Public, State of New York
No. 41-1720825
Qualified in Queens County
Cert. filed in New York County
Commission Expires March 30, 1977

B
P/S

75-1309

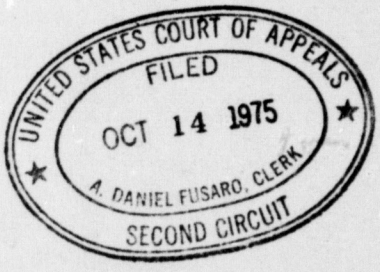
To be argued by
PHYLIS SKLOOT BAMBERGER

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, Appellee, -against- GEORGE GALGANO and VICTOR LEO, Appellants.	Docket No. 75-1309

APPENDIX TO THE BRIEF
FOR APPELLANT GALGANO

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



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PHYLIS SKLOOT BAMBERGER,
Of Counsel.

2 4

PAGINATION AS IN ORIGINAL COPY

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

75 CRIM. 208

D. C. Form No. 100 Rev.

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	*For U. S.:*
vs.	George E. Wilson AUSA 791-1953
~ GEORGE GALGANO - 1 ct.	
~ VICTOR LEO - 2 cts. a/k/a Victor Bianco	
	For Defendant:

(12) STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.		DISB.	
J.S. 2 mailed	Clerk							
J.S. 3 mailed ✓	Marshal							
Violation	Docket fee							
Title 18								
Sec. 891,894,&2 921,(a)(2)(3)&924(c)								
Extortionate crdit transaction,(Ct.1) Use of firearm to commit a relony. (Ct.2) (Two Counts)								

DATE	PROCEEDINGS
2-28-75	Filed indictment. B/W's ordered. B/W's issued.
3-10-75	Deft.Galgano(atty. present) Pleads not guilty. Motions returnable in 10 days. Bail fixed at $20,000. P.R.B. secured by $2,000. cash or surety. Deft. Leo(no atty.) Court directs entry of not guilty plea. Motions returnable in 10 days.Bail fixed at $20,000. P.R.B. secured by $2,000. cash or surety. Case assigned to Judge Lasker for all purposes. Pollack,J.
3-12-75	GEORGE GAIGANO= Filed Notice of Appearance of Atty Kassne & Detsky, 122 East 42nd, Street, New York City, 10017 Tel# 212-661-8190.
3-12-75	VICTOR LEO= Filed Notice of Appearance of Atty Donald Schinder, 260 Harrison Ave, Harrison, NY Tel# 914-835-1227.
4-1-75	VICTOR LEO = Filed Deft's Affdvt and Notice of Motion pursuant to Rule 6(e) F.R.C.P., for an order permitting the Deft to inspect the minutes of all proceedings had before the Grand Jury, etc. (Cont'd on Page #2)

DATE	PROCEEDINGS
-2-75	GEORGE GALGANO= Filed Deft's authority in support of motion to dismiss the indictment.
-2-75	GEORGE GALANGO= Filed Deft's Notice of Motion to Dismiss Indictment.
14-75	VICTOR LEO= Filed Daft's Memorandum of Law-Statement of Facts. (To Judge)
18-75	BOTH DEFT'S= Filed Pltff's Affdvt in opposition to Deft's motion to dismiss.
18-75	BOTH DEFT'S= Filed pltff's Affdvt in opposition to Deft's motion (VICTOR LEO) to inspect Grand Jury Minutes, ect.
18-75	VICTOR LEO= Filed pltff's Memorandum of Law in opposition to Daft's motion for inspection of Grand Jury Minutes, ect.
29-75	VICTOR LEO= Filed Defts Reply Memorandum of Law.
4-75	BOTH DEFT'S= Filed the following papers rec'd from Magistrate Raby (Mag#75-346): Docket Entry Sheets - Appearance Bond in the amount of $20.000. with $2,000. security, Receipt #47837. Appearance Bond in the amount of $20,000. with security of $1,200, Receipt #47875.
5-9-75	GEORGE GALGANO= Filed MEMO ENDORSEMENT on Deft's motion to dismiss indictment filed 4-2-75. - Motion granted to the extent of ordering an evidentiary hearing to determine the reason for the delay in bringing the indictment and whether the Deft's or either of them has been prejudiced by that delay. (m/n 5-12-75) LASKER,J. (Ret To Atty's 5/12)
5-9-75	VICTOR LEO= Filed MEMO ENDORSEMENT on Deft's Notice of Motion pursuant to Rule 6(e), of the F.R.C.P. filed 4-1-75. Motion denied except to the extent that the Court will inspect the Grand Jury minutes in camera. Motion to dismiss the indictment granted to the extent of ordering an evidentiary hearing to determine the reason for the delay in bringing the indictment and whether the deft's or either of them has been prejudiced by that delay.----LASKER,J. (m/n 5-12-75) (Ret To Atty's 5/12)
5-14-75	BOTH DEFTS= Trial adj'd unitl hearing 6-4-75.
6-1-75	Both Defts=Trial begun Jury selected--Trial con'd on Jun 5, 6, 9, 10, 11, 12, 13,
6-18-75	16, 17.--Summations, Jury Charge Jury diliberation on the 17th& Cont'd on Jun 18 Jury still diliberating-Verdict- Jury Finds Deft. G. Galgano Guilty on Ct. 1, Deft/ Victor Leo Guilty on Ct. 1 and N/G on Count 2. Bail cont'd as to both defts. Sentence set for 8-4-75 at 10Am for both defts..Lasker,J.
7-10-75	Filed transcript of record of proceedings, dated May 13, 1975
8-4-75	VICTOR LEO= Filed Judgment & Commitment Order = The Deft is hereby committed to the custody of the Atty General for imprisonment for a period of FIVE (5) YEARS and on condition that the Deft. be confined in a jail or treatment type institution for a period of SIX (6) MONTHS, the execution of the remainder of the sentence of imprisonment is suspended and the Deft placed on Probation for a period of FOUR (4) YEARS and SIX (6) MONTHS, subject to the standing probation order of this Court. Deft continued on present bail of $20,000. PRB secured by $2,000. Cash or securety pending appeal---- LASKER,J.

(Cont'd on Page #3)

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS
8-4-75	GEORGE GALGANO= Filed Judgment & Commitment Order= The Deft is hereby committed to the custody of the Atty General for imprisonment for a period of FIVE (5) YEARS on the condition the Deft. be confined in a jail or treatment type institution for a period of SIX (6) MONTHS, the execution of the reaminder of the sentence of imprisonment is suspended and the Deft. placed on Probation for a period of FOUR (4) YEARS and SIX (6) MONTHS, subject to the standing probation order of this Court. Deft. continued on present bail of $20,000. PRB secured by $2,000. Cash or surety pending appeal.---LASKER,J.
8-4-75	VICTOR LEO= Filed Deft's P.R.B. Pending Appeal in the sum of $20,000. secured by $2,000. Cash -CLERK
8-4-75	GEORGE GALGANO= Filed Deft's P.R.B. Pending Appeal in the sum of $20,000. secured by $1,200. Cash -CLERK
8-11-75	VICTOR LEO= Filed Deft's Notice of Appeal to the U.S.C.A. for the 2nd Circuit from the Judgment entered on 8-4-75 (Copy mailed to Deft & U.S.Atty)
8-12-75	GEORGE GALGANO= Filed Deft's CJA-23 Financial Affdvt.
8-12-75	GEORGE GALGANO= Filed Deft's Notice of Appeal to the U.S.C.A., 2nd Circuit from the judgment of conviction entered on 8-4-75. Leave to Appeal in Forma Pauperis is hereby GRANTED---LASKER,J. (Copy mailed to AUSA & DEFT)
8-18-75	Filed transcript of record of proceedings, dated: JULY 4, 5, 6, 7-75.
8-18-75	Filed transcript of record of proceedings, dated: JUN 6, 12 18-75 AND AUG 4-75
8-18-75	Filed transcript of record of proceedings, dated: JUL 10, 11, 12, 13-75
8-28-75	BOTH DEFT'S = Filed Notice that the record on Appeal has been cretified and transmitted to the U.S.C.A. for the 2nd Circuit.
9-2-75	GEORGE GALGANO= Filed Notice that the Supplemental record on appeal has been certified and transmitted to the U.S.C.A. for the 2nd Circuit.
8-20-75	Filed transcript of record of proceedings, dated: MAY 13, 14-75

GEW:ew
72-0072

75 CRIM. 208

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA :

-v- : INDICTMENT

GEORGE GALGANO and VICTOR LEO a/k/a Victor Bianco, : 75 Cr.

Defendants. :

- x

COUNT ONE

The Grand Jury charges:

From on or about July 17, 1970 to on or about November 24, 1970, in the Southern District of New York, GEORGE GALGANO and VICTOR LEO a/k/a Victor Bianco, the defendants, unlawfully, wilfully and knowingly did participate in the use of extortionate means, to wit, the use, and an express and implicit threat of use, of violence and other criminal means to cause harm to the person, reputation, and property of persons, including Bruno Zaffino, Clementine DeRaffele and Florenz DeRaffele to collect and attempt to collect extensions of credit and to punish such persons for the nonpayment of extensions of credit.

(Title 18, United States Code, Sections 891, 894 and 2.)

GEW:ew
72-0072

COUNT TWO

The Grand Jury further charges:

From on or about July 17, 1970 to on or about August 10, 1970, in the Southern District of New York, VICTOR LEO a/k/a Victor Bianco, the defendant, did unlawfully, wilfully and knowingly carry a firearm, while committing a felony for which he may be prosecuted in a court of the United States, to wit, the felony in violation of Title 18, United States Code, Sections 891, 894 and 2 charged in the First Count of this Indictment.

(Title 18, United States Code, Sections 921(a)(2)(3) and 924(c).)

FOREMAN

Paul J. Curran

PAUL J. CURRAN
United States Attorney

Jury finds Dft. George Delgado Guilty on Count 1, Dft. Victor Lee Guilty on Count 1, and N/Guilty on Count 2. Bail Continued as to both Defendants. Sentence set for August 4, 1975 at 10 am for both Defendants.

of

I ask.

WILSON, AUSA

8-4-75 - Dft GALGANO, atty (PAUL E. WARBURGH) pres. sent to 5 yrs. on condition that dft. be confined in a jail or treatment type inst. for a prd of 6 mos, thereafter remainder of the sent of imprisonment is suspended, dft placed on prob for a prd of 4 yrs. and 6 mos. Dft cont'd on bail previously posted pending appeal.

~~Dft DEO~~

Dft LEE, atty (LEONARDO KREINCES) pres. sent to 5 yrs, on condition that dft be confined in a jail or treatment type inst. for a prd of 6 mos. thereafter remainder of the sent of imprisonment is suspended, dft placed on prob. for a prd of 4 yrs and 6 mos. dft cont'd on bail previously posted pending appeal.

Larkin, J.

Form No. USA-33s-274 (Ed. 9-25-58)

United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

GEORGE GALGANO
and VICTOR LEO
a/k/a Victor Bianco,

Defendants.

INDICTMENT

75 Cr.

(18 USC §§ 891, 894, 2, 921(a)(2)(3) and 924(c).)

PAUL J. CURRAN
United States Attorney

A TRUE BILL

Foreman

3-10-75 - Deft. George Galgano pre. (Cathy Boland pre.) Deft pleas N/G. 10 days for ... Case assigned to Lasker. J. Bail fixed $20,000 P.R.B. secured by 2 ... Cash or Sur...

3-10-75

Court-Deft. Victor Leo, pre (Cathy ~~Do not Be~~ pleas N/G. Bail fixed at $20,00 P.R.B. secured by $2,000 cash or sure...

Pollack J.

May 19 - 1975 - Trial set for until June ... Hearing

June 4, 1975 - Trial began - jury selected -

June 5, 1975 Trial contd -

June 6, -1975 - Trial contd -

June 9, -1975 - Trial contd -

June 10, 1975 - Trial contd -

June 11, 1975 - Trial Contd -

June 12, 1975. Trial contd

June 13, 1975 - Trial contd

June 16, 1975 - Trial contd

June 17, 1975 - Trial contd - Summations, ... Jury deliberating.

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CHARGE OF THE COURT

(Lasker, J.)

Ladies and gentlemen, before I start my formal charge, I want to state to you that I wish I could charge you simply in conversation as I am addressing you at the present time. That might be a lot more effective in capturing your attention or retaining your attention. Unfortunately, these days, like everything else in life, the law is more complicated than it was in the good old days when the judge simply talked to the jury and told them what the law was.

Furthermore, in a criminal case, of course the matter is of significant importance to both the government and to the defendants, and we all want to be sure that the law is related to you as impeccably as possible, and for reasons of that kind I have, as has now become the custom in this court and most large courts, reduced my charge to writing.

I mention that to you to explain why I am going to read my charge. I also mention it to you because I may have a tendency to read fast, and if I do and if any of you find it at all difficult to understand what I am saying or to absorb what I am trying to get across to you, I ask you to raise your hand so that I will be notified

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and I will adjust my pace accordingly.

Ladies and gentlemen of the jury, now that you have heard the testimony and the arguments of counsel, the time has come to instruct you as to the law in this case.

You have been chosen and sworn as jurors in this matter to try the issues presented by the allegations of the indictment and on your determination of the facts -- and I stress the words "your determination" -- to decide under the law as I shall instruct you whether the government has proven the charges against George Galgano or Victor Leo beyond a reasonable doubt.

I will discuss the charges with you later in detail, but before that I want to give you a few important instructions.

First, you are to perform your duty as jurors without bias or prejudice to or for anybody, whether the government or either of the defendants. The law does not permit jurors, and you would not want it to permit jurors, to be governed by sympathy or swayed by prejudice or public opinion.

Of course, the fact that the government is a party here, that is, that the prosecution is brought in the name of the United States, entitles it as a party to this lawsuit to no greater consideration than that accorded

to any other party to a litigation. By the same token, it entitles it to no less consideration. All parties, the government and individuals alike, stand equal before this bar of justice.

Second, we start with the proposition that we started with at the outset of the trial, that is, that the law presumes every defendant to be innocent of every charge against him. You will recall that when I selected you to serve on this jury I specifically asked you if you could enter on the discharge of your duties presuming either defendant to be innocent unless proven guilty beyond a reasonable doubt after your own deliberations, and each of you gave me the answer yes.

This presumption of innocence is alone sufficient to acquit any defendant unless or until you, as jurors, have unanimously satisfied yourselves beyond a reasonable doubt of the particular defendant's guilt on the particular charge from all of the evidence that's been presented.

Now, the burden or the responsibility is on the government to prove a defendant guilty beyond a reasonable doubt of every essential element of the crime charged against him, and I will of course advise you later in this charge just what elements there are to each of the charges.

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Third, the existence of the indictment, as I told you at the outset of the trial, does not constitute evidence against either defendant but is merely a method of bringing a charge against him.

You must bear in mind, by the way, that legal responsibility is personal. Indeed, all responsibility, in my view, is personal. The guilt or innocence of either of the defendants on trial before you must, of course, be determined separately with respect to him, solely on the evidence or the lack of evidence presented against him. The case of each defendant, in other words, stands or falls upon the proof or lack of proof of the charge against him and not against someone else.

Now, I have said that the government has the responsibility of proving a defendant guilty beyond a reasonable doubt. Let me define that important term for you at the outset.

A reasonable doubt is not a vague, speculative or imaginary doubt. It is a doubt which, as the phrase suggests, is based on reason and which comes either from the evidence that has been put before you and has been heard and seen or from the lack of evidence that you have not heard or seen. It is a doubt which a reasonable man or woman might entertain. It is a doubt, and I think this

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is the best definition, which would cause reasonable people like yourselves to hesitate to act in relation to matters of importance in your own private lives.

Let us say you have an important decision to make. How do you go about making that decision? You think about everything you know about it, you think about everything you would want to know and you have not been told, and you say to yourself: Do I have enough information? Do I have enough dependable information so that I am ready to act? If you say "I don't," then you have a reasonable doubt. If you say "I do," then you do not have a reasonable doubt.

Now, a mere suspicion will not justify a conviction. Suspicion is no substitute for evidence, nor is it sufficient to convict a defendant if you find that the circumstances merely render his guilt probable. The law does not deal in probability. Since the burden or responsibility is on the prosecution to prove a defendant guilty beyond a reasonable doubt, a defendant has the right to rely on the mere failure of the prosecution to establish his guilt, or the defendant may also, as they have in this case, of course, rely on his own testimony and the testimony of his witnesses.

Now, in saying that the government must prove

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its case beyond a reasonable doubt if there is to be a conviction I do not mean that the government is required to prove guilt beyond all possible doubt. Indeed, in human affairs it is hard to think of anything that we can prove beyond all possible doubt with the possible exception of a mathematical proposition. But the proof must be, as I have said, of such a convincing character that you would be willing to rely and act on it in the most important decisions of your own affairs.

Now let's talk, ladies and gentlemen, about the very important question of credibility of witnesses. I quite agree with counsel, who I think agree with each other, that the determination in this case depends on your estimate of the credibility of the witnesses, and, therefore, I want you to pay close attention to what I am about to discuss with you because that has to do with the subject of how you determine the credibility of a witness.

The evidence in this case, as I have told you a number of times, consists of the testimony of witnesses, the exhibits which have been received in evidence and the facts which have been stipulated or agreed by counsel. You are obligated to decide the case solely on the basis of the evidence, but in your consideration of the evidence you are not limited to the bald statements of a witness.

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You are entitled to and, indeed, in this case I think you must think beyond the words that have been uttered.

In deciding the many questions before you, it is your job to determine the credibility of the witnesses who have testified here. Now, how do you go about that? Perhaps the best answer is to state that you determine the truthfulness or accuracy or weight to be given to a witness' testimony in the same way that you would determine that question in your own personal affairs. After all, we are all constantly called upon, if you think about it, from day to day to determine how much confidence we place in the statements that people make to us.

The truthfulness or dependability of a witness, as that of any other person you deal with, can be determined by his demeanor, that is, his look, his relationship to the case and to the parties, the possibility of his being biased or partial or his not being biased or partial, the stake that he may have in the outcome of the case, the reasonableness of his statements, the strength or weakness of his recollection and the extent to which what he has said has been either corroborated on the one hand or contradicted on the other by the testimony of other witnesses or by exhibits or stipulation.

You should take into consideration the interest

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and stake which a witness has in the outcome of a case, this case in particular, of course.

Each of the defendants of course has a substantial interest in the outcome of the case, but you may consider that other persons, for example, the government witnesses or a government agent, may also have an interest in how the case turns out, and the mere fact that a witness has an interest in the out come of the case does not mean that he may not be telling the truth.

In a criminal case, a defendant cannot be compelled to take the stand and testify. Whether he testifies or not is a matter of his own choosing. A defendant who wishes to testify, as the defendants here have, however, is a competent witness. That means he has the right to testify. And the defendant's testimony is to be judged in the same way as that of other witnesses.

Now, there has been testimony also from a number of witnesses, two, I believe, who are employed by the government. Just because a witness may be employed by the government does not, of course, mean that he is entitled to any greater credibility because he is a government witness. It is for you to decide how much, if at all, that interest as a government employee may have affected his testimony, and you may conclude it has not affected it at

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all.

Of course, the testimony of a witness may also be impeached by his own prior inconsistent statements unless there is some explanation of the inconsistency.

In ordinary life, when you need to determine the truthfulness of a person, you ask yourself, don't you, as you would here, how did he or she impress me? Did his or her version appear straightforward and candid or did he or she appear to be trying to hide some of the facts? Did he or she have any motive to testify falsely or no motive of that kind?

The ultimate question for you to decide on in passing on the credibility of a witness is whether he or she told you the truth. It is for you and you jurors alone to determine the weight and credit to be given to the testimony. And in making these suggestions, I am giving you guidelines and I am not attempting, nor have I attempted, to suggest how to apply the guidelines.

If you find that a witness has wilfully, that is, purposely, testified falsely to any material that is an important fact or matter, not some matter which you believe to be unimportant, you may reject the entire testimony of the witness or you may accept such portion of it as you believe and reject the remainder.

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Now, ladies and gentlemen, as I have said, your determination in this case must be based on the evidence. There are, generally speaking, two types or categories of evidence from which you may properly find the facts. I am sure you have heard them referred to often. One is called direct evidence. That's the evidence of an eye or ear witness. "I have heard it," such a witness would say, or "I have seen it."

The other is indirect or more generally called circumstantial evidence. Circumstantial evidence is defined as proof of events or circumstances which point to the existence or non-existence of facts as to which there was no eye witness or ear witness.

The law makes no distinction as to the weight of circumstantial evidence as distinct from direct evidence. It requires only that the jury find the facts in accordance with all the evidence in the case, both direct and circumstantial, beyond a reasonable doubt.

An example, by the way, of the difference between direct and circumstantial evidence is the following; it is an example given very often to juries but it's vivid, I think, and worthwhile.

If you looked out the window here and saw that it was raining, that would, of course, be direct evidence

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that it was raining. On the other hand, if all the blinds there were drawn and somebody came through the door over there with a dripping umbrella, that would be pretty good circumstantial evidence that it was raining outside. You wouldn't have seen it with your own eyes but you would have the right to infer, seeing a man come through the door with a dripping umbrella, that it was raining outside. To be sure, he may have been standing under a shower in one of the rooms in this building that has a shower, but that would be highly unlikely, and the other inference is the likely one.

Now, ladies and gentlemen, both the United States Attorney and the defense counsel have during the course of the trial objected to the introduction of evidence and addressed arguments to the bench, and we have had to go out into the robing room and perhaps you have heard our voices in there. I don't know. I want to tell you at this time that it is the duty of the attorneys on each side of a case to make such objections when an attorney believes that the other side is proposing to put into evidence or ask questions about something that is not properly admissible, and nothing that I have said in ruling on objections expresses any view of mine as to how this case should be decided.

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I come now to discuss the indictment in this case with you and I ask the clerk to please give me the indictment.

The indictment in this case, which contains two counts, reads as follows:

"Count 1.

"The Grand Jury charges:

"From on or about July 17, 1970, to on or about November 24, 1970, in the Southern District of New York" -- and I will instruct you that the actions that have been testified to here did take place in the Southern District of New York -- "George Galgano and Victor Leo, also known as Victor Bianco, the defendants, unlawfully, wilfully and knowingly did participate in the use of extortionate means, to wit, the use and express and implicit threat of use of violence and other criminal means to cause harm to the person, reputation and property of persons, including Bruno Zaffino, Clementine DeRaffele and Florenz DeRaffele, to collect and attempt to collect extensions of credit and to punish such persons for the non-payment of extensions of credit."

That is Count 1 and it charges both Mr. Galgano and Mr. Leo. Count 2 charges only Mr. Leo and reads as follows:

"The Grand Jury further charges:

"From on or about July 17, 1970, to on or about August 10, 1970, in the Southern District of New York, Victor Leo, also known as Victor Bianco, the defendant, did unlawfully, wilfully and knowingly carry a firearm while committing a felony for which he may be prosecuted in a court of the United States, to wit, the felony in violation of Title 18, United States Code, Sections 891, 894 and 2, charged in the first count of this indictment."

Now let me take up each of these charges with you separately.

The defendants in Count 1 are charged with having violated Title 18, United States Code, Section 894. That is an act passed by Congress which reads in pertinent part as follows:

"Whoever knowingly participates in any way or conspires to do so in the use of any extortionate means to collect or attempt to collect any extension of credit or to punish any person for the non-repayment thereof" is guilty of committing a crime.

Now, to extent credit means to make or renew any loan, and an extortionate means is any means which involves the use or any express or implied threat of use of violence or other criminal means to cause harm to the person,

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reputation or property of any person.

In order to convict either Mr. Galgano or Mr. Leo of the crime charged in Count 1, you must find that the government has proven beyond a reasonable doubt all of the following elements:

First, that Bruno Zaffino, Florenz DeRaffele or Clementine DeRaffele owed money to Galgano, Leo or David Grande.

Second, that during the period July 17, 1970, to November 24, 1970, in the Southern District of New York, the defendant in question, that is, either Mr. Galgano or Mr. Leo, whosever case you are then considering, attempted to collect the money owed and attempted to induce Zaffino or the DeRaffeles to make a payment on the debt.

Third, that in so attempting to collect the loan, the defendant in question participated in the use of extortionate means in connection with the collection of the debt, that is, that the defendant in question used a means which involved the use or an express or implied threat of use of violence or other criminal means to cause harm to the person, reputation or property of the people charged, that is, Mr. Bruno Zaffino, Mrs. Clementine DeRaffele or Mr. Florenz DeRaffele.

Violence of course means simply physical harm

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of any kind or threat of such harm.

Fourth -- I am still discussing the elements of the crime charged -- the fourth of those elements is that the violence was imposed or the threats were communicated by the defendant to Zaffino or either of the DeRaffeles.

And Fifth and finally, that in attempting to collect the loan in the manner testified the defendant acted unlawfully, wilfully and knowingly.

To act knowingly means that the defendant must have acted deliberately. He must have known what he was doing and have done it on purpose and not by mistake or accidentally or because somebody forced him to.

To act wilfully means to act intentionally or with a bad purpose to do something which the law forbids.

Now, in deciding whether each defendant wilfully used violence or threats of physical harm or other criminal means, you should take into consideration all of the evidence in this case bearing on what the defendants intended in their statements and actions and what they actually said. Words harmless in themselves may take on a threatening meaning in the context in which they are used. On the other hand, you may decide that the words used by the defendants in the full context of what was said carried no such threatening significance. The question for you to

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decide is whether a defendant intended by his words to give the impression that physical harm or other criminal means would be used and, if so, whether in the full context of the conversation the words actually used by the defendants reasonably appear to you to have stated such threats.

The mere voluntary payment of money or the delivery of property unaccompanied by any express or implied threats of use of violence or other criminal means to cause harm to a person or to his or her reputation or property does not constitute a violation of the statute. Therefore, unless the payments here alleged were made under such conditions there is no violation of the law.

It goes without saying -- what I am about to utter applies to both counts -- it goes without saying that in order to find either defendant guilty you must find that he was the person who committed the crime alleged.

The government has the burden of proving identity along with all other elements of the crime beyond a reasonable doubt, and if you are not convinced beyond a reasonable doubt that either defendant was the person who committed the crime with which he is charged, you must of course find that defendant not guilty.

In appraising the identification testimony of a witness, you should consider the following points:

First, whether the witness had an adequate opportunity to observe the defendant identified.

Second, whether the identification which the witness made was the result of his own recollection.

Third, the length of time between the occurrence of the crime and the next opportunity of the witness to see the defendant identified.

It is not essential that the witness who identified the defendant be absolutely free from doubt as to the correctness of his identification. Of course, the credibility of an identification witness is determined in the same way as that of any other witness.

I come now to the description of the law with regard to Count 2 which charges Mr. Leo. The applicable law there is Title 18, United States Code, Section 924(c)(2), which is an act of Congress also, and which reads that:

"Whoever carries a firearm unlawfully during the commission of any felony which may be prosecuted in a court of the United States" shall be guilty of a crime.

In order to prove Mr. Leo guilty on Count 2, the government must establish to your satisfaction beyond a reasonable doubt each of the following four elements:

First, that between on or about July 17, 1970, and on or about November 24, 1970, Mr. Leo committed the

felony set forth in Count 1 of the indictment, which I have just discussed.

Second, that during the commission of that felony he carried a firearm.

Third, that he carried the firearm unlawfully.

And fourth, that he acted knowingly and wilfully.

Now, with regard to the first element of Count 2, I have said that before Mr. Leo can be convicted on Count 2 it must be established that Mr. Leo committed the crime charged in Count 1. This means that if you find Mr. Leo not guilty on Count 1 then you must necessarily find him not guilty on Count 2. If, however, you find Mr. Leo guilty on Count 1, then you must consider the remaining elements of Count 2, which I now proceed to discuss.

The second element of Count 2 which you must consider is whether during the commission of the felony in Count 1 Mr. Leo was carrying a firearm.

A firearm is defined in law as any weapon which is designed to expel a projectile or a bullet by the action of an explosive.

The third element that you must find is that Mr. Leo possessed the firearm unlawfully.

"Unlawfully" means simply contrary to law. In the context of this case, it means carrying a firearm without

felony set forth in Count 1 of the indictment, which I have just discussed.

Second, that during the commission of that felony he carried a firearm.

Third, that he carried the firearm unlawfully.

And fourth, that he acted knowingly and wilfully.

Now, with regard to the first element of Count 2, I have said that before Mr. Leo can be convicted on Count 2 it must be established that Mr. Leo committed the crime charged in Count 1. This means that if you find Mr. Leo not guilty on Count 1 then you must necessarily find him not guilty on Count 2. If, however, you find Mr. Leo guilty on Count 1, then you must consider the remaining elements of Count 2, which I now proceed to discuss.

The second element of Count 2 which you must consider is whether during the commission of the felony in Count 1 Mr. Leo was carrying a firearm.

A firearm is defined in law as any weapon which is designed to expel a projectile or a bullet by the action of an explosive.

The third element that you must find is that Mr. Leo possessed the firearm unlawfully.

"Unlawfully" means simply contrary to law. In the context of this case, it means carrying a firearm without

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a permit issued by an appropriate licensing agency, in this case a license issued by any county of the State of New York. Thus, if you find beyond a reasonable doubt that Mr. Leo possessed the firearm without such a permit you may find that he was carrying it unlawfully.

In this connection, the government has introduced in evidence its Exhibit 22, which is a certificate from the New York State Police Department to the effect it has made a diligent search and has found no record of any pistol permit in its files indicating a registration of a pistol to the defendant Victor Leo under his name or under the name of Victor Ronald Leo or Victor Bianco or Frank Bianco. You may accept this certificate as evidence that the handgun which it is charged that Mr. Leo fired was not registered to him, but it is up to you to determine whether you accept the certificate as evidence of that fact or not.

Finally, and this is the last element with regard to the second charge, you must find that Mr. Leo possessed the firearm wilfully and knowingly. As I instructed you earlier, this means that you must be satisfied beyond a reasonable doubt that the defendant knew what he was doing, was acting deliberately and voluntarily as opposed to mistakenly or accidentally or as a result of coercion.

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Of course, it is not necessary that Mr. Leo be shown to have known that he was violating any particular law. Rather, it is sufficient if you are convinced beyond a reasonable doubt that he was aware of the general unlawful nature of his act.

Now, it has been indicated that the government in this case relies not only on the acts of Congress which I have already specified to you but also on Title 18, United States Code, Section 2, which reads:

"Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal."

That means as somebody who committed the crime himself. In other words, any person who commits an act in violation of a criminal statute commits a crime, but it is also a crime not only to commit the illegal act but to aid or abet or induce another person to commit such an act.

Accordingly, if you find beyond a reasonable doubt that in Count 1 either defendant aided or abetted the other in the commission of the crime charged, you would have a sufficient basis for finding the abettor guilty of the crime charged himself.

Now, in order to find that a defendant aided and

abetted another in the commission of a crime, you must find beyond a reasonable doubt that he associated himself with the criminal venture, that is, he participated in it as something which he wished to bring about or that he sought by his action to make the crime succeed.

Thus, to find a defendant guilty of aiding and abetting, you must of course find something more than mere knowledge on his part that a crime was being committed, for a mere spectator at a crime is not a participant. But in order to convict, it is not necessary that you find that a defendant himself did all the acts. If a defendant caused an act to be done which, if directly performed by him, would be an offense against the United States, in law it is as if the defendant himself had done the act.

Now, there has been discussion here as to the motive of a defendant to commit the crime with which he is charged or alternative to the absence of motive.

I instruct you that the proof of motive is not a necessary element of the crime with which a defendant is charged. Proof of motive does not establish guilt, nor does want of proof of motive establish that a defendant is innocent. If the guilt of a defendant is shown beyond a reasonable doubt, it is immaterial what a defendant's motive for the crime may be or whether any motive may be shown;

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but the presence or absence of motive is a circumstance which you can consider as bearing on the intention of the defendant.

There has been testimony that the defendant Galgano told federal officers that he had assigned the monies owed to him to Mr. Leo and Mr. Grande, that he had not hired Mr. Leo and Mr. Grande to collect the monies for him and that the reason why the checks from Mr. Zaffino and Mrs. DeRaffele were made pable to him was that Mrs. DeRaffele requested this method of payment.

There has also been testimony that, to the contrary, it was Mr. Galgano who insisted that the checks be made payable to Galgano Realty Corporation.

Now, there is also testimony before you regarding a statement by Mr. Leo that he told federal officers that he was known as Victor Bianca. I stress the "a" because it is Mr. Bianca's testimony that he denied having been known by the name of Bianca.

On the other hand, witnesses have identified Mr. Leo as the man they knew as Frank or Victor Bianco.

I instruct you that a defendant's statements which tend to establish his innocence if you believe those statements to be false are circumstantial evidence of a guilty mind and have independent probative force which you

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may consider in reaching your verdict.

Ladies and gentlemen, I have come quite near the end of my formal instructions, but the most important part of the case is the part which you are now to play as jurors because it is for you and you alone to decide whether Mr. Galgano or Mr. Leo is guilty of either of the charges against Mr. Leo or the charge against Mr. Galgano. I know that you will try the issues that have been presented to you in accordance with the solemn oath you took as jurors in which you promised that you would well and truly try the issues joined in this case based solely on the evidence which has been put before you in this courtroom and the instructions as to the law which I am now giving you.

I like that phrase "well and truly try the issues joined in this case." It goes back a thousand years and its old-fashioned flavor reminds us of all of the hundreds of thousands of juries who have performed this function before you.

In order for you to reach a verdict of either not guilty or guilty as to either of the defendants on either count, your verdict must be, of course, unanimous. For this purpose I have prepared for you sheets on which you can record your verdict. I ask the clerk to give the original of these sheets to Mr. Ellis, who, because he is

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your number one, I am going to ask to be foreman of the jury. It's very simple. It reads: Count 1, George Galgano, not guilty, guilty; Victor Leo, not guilty, guilty. Count 2, Victor Leo, not guilty, guilty.

Mr. Ellis will be in charge of your deliberations and communications to the Court but his being foreman does not mean he has any more authority in the circumstances than any other member of the jury, nor that his vote is more important than any other.

Although I have said that your verdict must be unanimous, each of you must decide individually in accordance with your own conscience but only after you have deliberated with your fellow jurors to determine whether a just verdict has been reached. You should not hesitate to change your mind if you become convinced that your original view of the case was not in accordance with the facts or the law. On the other hand, you should not change your mind just for the purpose of reaching a verdict as a matter of convenience. I have no reason to believe that this jury will not be able to reach a unanimous verdict one way or the other as to the matters put before it.

To sum up, if you find that there is a reasonable doubt that the law has been violated by either defendant, you should not hesitate for any reason to acquit that defendant as to that count.

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On the other hand, if you find that the law has been violated as charged by either defendant, you should not and you may not hesitate because of sympathy or any other reason to render a verdict of guilty as to that defendant for that count.

Nothing that I have said in these instructions, whatever it may be, and I stress it, is intended to indicate any view of mine as to how the various issues put before you should be decided. That is your job and your job alone.

Now, ladies and gentlemen, you have the right at any time to ask for any of the exhibits. I will not suggest that all of the exhibits be put down on your table in the other room because I think that to have them all together there would simply be confusing, and it is easier, more concrete, more realistic for you to ask for anything that is of interest to you.

You have a right to put any questions that you want to the Court. If there is anything that you don't understand about my instructions or otherwise, and if you wish to have any testimony read back or if you wish any other exhibit, it will be helpful if you can be as specific as possible about the material that you are interested in so that we can be assisted in locating the material in the record.

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The way to get in touch with us, Mr. Ellis, is to give a note to the marshal who will be standing just outside the door of the jury room.

I neither encourage nor discourage you in asking for testimony or exhibits, but I certainly want you to ask for whatever you want.

I have now come to the very end of my instructions. I will retire to the robing room for the last time as far as the jury is concerned and confer briefly with counsel to see whether they believe that the charge of the Court requires any clarification, and we will be out in just a moment. I ask you to wait for us at this time.

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(In the robing room.)

THE COURT: Gentlemen, each of you make your own objections.

MR. KREINCES: In connection with your Honor's charge on alleged false statements to federal officers --

THE COURT: Exculpatory statements?

MR. KREINCES: Yes. -- Your Honor indicated he had said that he had not been known by the name of Victor Bianco because it is Mr. Bianco's testimony that he was known as Frank Bianco, instead of saying it was Mr. Leo's testimony he was known.

THE COURT: I would be glad to clarify that.

MR. WILSON: In the same connection, I believe Special Agent Riggen testified that he was asked,and denied using any other name, any nickname or alias.

THE COURT: I merely said this was Mr. Bianco's testimony. I am not going to go through the record again. I will, because Mr. Leo is a defendant, indicate that it was Mr. Leo's testimony.

MR. KREINCES: You said "Bianco' twice instead of referring to him as "Leo." That is what I mean.

THE COURT: I understand that.

Anything else?

MR. KREINCES: That is all.

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MR. DETSKY: In your charge on "aiding and abetting," I don't believe you made that very clear to the jury as to what you meant. Aiding and abetting whom? Aiding and abetting each other? Aiding and abetting a third party?

THE COURT: I made it very clear. I said before you can find one aided and abetted the other defendant.

MR. DETSKY: Would that include David Grande? They could be guilty of aiding and abetting him as the principal.

THE COURT: I am not going to suggest they aided or abetted Mr. Grande. I am not going to suggest it specifically, in any event.

MR. WARBURGH: In that line, I request that your Honor charge the jury as follows. Because Mr. David Grande is not a named party in the indictment, I would ask your Honor charge the jury as follows:

If you find the defendant aided or abetted David Grande, then you would have to find that defendant not guilty because David Grande is not a defendant or person named in the indictment.

THE COURT: I decline to make such a charge for two reasons. In the first place, I don't think it is a correct statement of law; and in the second place, I believe

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that my charge already has, whether it may be mistaken or not, referred to aiding and abetting another defendant. It happens to be the way that the language was given to me by the Government, if it says that.

Yes; says, "Accordingly, if you find beyond a reasonable doubt that in Count 1 either defendant aided or abetted the other in the commission of the crime charged, then," et cetera. I decline to change it.

MR. WARBURGH: Also, for the record, to preserve the record, I object to the Court making a reference to the defendant's interest in this particular case.

Also, with respect to the Court's discussion of the elements or the applicable law, I believe the Court used the words"or conspired to do so."

There is no conspiracy alleged in this case. I think the Court should point that out to the jury, because not to do so would be misleading.

THE COURT: All right, I will do that.

MR. WILSON: That is the statute.

THE COURT: I did read the statute which includes the word "conspiracy."

MR. WARBURGH: The Court will then say there is no conspiracy involved in this case?

THE COURT: Yes.

MR. WILSON: That is the one item that troubles me. You had cut out part of the definition. The evidence shows that -- talking about checks --

THE COURT: What request is this?

MR. WILSON: No. 2. Originally, I requested the entire definition. You cut part of that out. What you gave was,"to extend credit, means to make or renew any loan or to enter into any agreement," and you stopped.

THE COURT: Yes, I didn't even read, "or enter into any agreement."

MR. WILSON: I guess you didn't. Here, we are talking about checks. If you go on further, it includes all types of debts,"whereby the repayment or satisfaction of any debt or claim, whether acknowledged or disputed, valid or invalid, however arising, may or will be deferred."

The thrust of the defense--although I don't agree with it--is that somehow the genesis of the debts had something to do with whether or not threats were made. I think that the jury probably, in view of that, ought to get the entire -- I have heard arguments --

THE COURT: The reason I excluded those words is-- it has nothing to do with the theory of the defense or prosecution -- merely, I felt the words were so much gobbledy-gook, they would confuse rather than clarify the jury.

You are talking too much like lawyers. Any layman can understand this case. It is as simple as A, B, C that you are claiming in the first count here, two defendants threatened certain people in connection with the payment of a loan. It couldn't be more basic. We see it on television, we see it in the movies, we read about it in the Godfather. Everybody knows what we are talking about. I will make these two clarifications.

(In open court.)

THE COURT: There are two small points which I would like to clarify for you. I may have said -- and if I did, I did not mean to say -- that Mr. Bianco said that his name was not Bianco. Of course, I meant to say, Mr. Leo said that his name was not Mr. Bianco.

And in reading one of the Acts of Congress, I included a reference, because it was in the Act, to the word "conspire," or "conspiracy."

I wish to remind you that the Government does not charge that there is any conspiracy in this case. If it had, I would have to give you a long song-and-dance instruction on conspiracy. It does charge that the defendants aided and abetted each other.

JUROR NO. 3: I didn't entirely understand "probative."

THE COURT: That means: has the quality of proving something. When something has probative value, we mean it tends to prove something; and if it does not have probative value, it does not tend to prove.

JUROR NO. 3: In other words, the kind of evidence.

THE COURT: I have never said that anything does, because it's for you people to decide whether or not it does have probative value; that is, whether it tends to prove anything or not. I have said that certain types of evidence or testimony may have probative value, and you may consider what probative value you think such evidence or statements do have.

All right. Madam Clerk, will you please swear the marshals.

(Marshals sworn.)

THE COURT: Ladies and gentlemen, your long wait has pretty much ended. It is now up to you, and I ask you to go with the marshal and commence your deliberations.

(At 3:47 p.m., the jury retired to deliberate upon a verdict.)

THE COURT: Gentlemen, I am going to my chambers now. I request counsel, insofar as the jury may ask for items of evidence, to agree as to what those items of

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evidence are and to transmit them to the jury without the necessity of my having to come here.

If there is a request for testimony, I also request counsel, with the assistance of the reporter, to find the testimony before I have to come here; and if there is no controversy as to what is to be read to the jury, I would appreciate the agreement of both sides that I need not sit here like a sitting duck, just to listen to the reading of the testimony.

Sometimes the Court's assistance is needed, either to get the jury in, to find out what the jury means by a message, or to determine whether--for example, if certain testimony is asked to be read -- the jury means all of it or the direct examination or the cross-examination. Of course, I would be glad to find out about those things.

I authorize the clerk to open any note received from the jury, but not to disclose its contents to anybody until she reads it to me on the telephone. I will then give her instructions as to whether she is to advise you of the contents of the note,or I will come here.

(Recess.)

xxx (Note from jury marked Court Exhibit 3.)

(5:50 p.m., in open court: jury present.)

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THE COURT: Be seated, please.

Ladies and gentlemen, I called you in because, although I don't think it would be reasonable to assume that you have reached a verdict yet, I felt it fair to ask you what you wanted to do about the timing of the situation: whether you want to stay late tonight or you do not.

What I would like to have you do -- I certainly don't want to ask anybody in open court -- I would like to have you, Mr. Ellis, go back with the jury and see whether it is the consensus it would be better to stay because you might reach a verdict soon let's say, or if you might not, you would rather go and return tomorrow morning.

You don't have to have unanimity on there, but it ought to be fair. I don't want to know whose views are what at any time. I don't want you to report how the jury stands on anything, but if you could come back and tell me whether most of you want to stay or all of you want to stay or vice versa, I will just wait until you are ready.

(The jury left the courtroom.)

(Note handed to Court.)

THE COURT: The jury would prefer to continue their negotiations tomorrow morning.

THE COURT: Bring them in.

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(Jury enters the courtroom.)

THE COURT: Please be seated, ladies and gentlemen.

I have your note which says:

"The jury would prefer to continue its deliberations tomorrow morning." Signed by Mr. Ellis.

I will ask the court clerk to make a Court exhibit of it.

xxx (Note from jury marked Court Exhibit 4.)

THE COURT: That is fine with all of us.

We are going to have some complications. I am starting the trial of another case tomorrow morning, which will also have a jury, and obviously, you can't both be in the same room. I guess it is lucky enough for one jury to get in that room.

I have arranged that you will be allotted another room, and it's Courtroom 518 on the fifth floor. Would you all write that down now, please. Is there anybody who doesn't have something to write on? If so, we will furnish it to you.

Mr. Marshal, did you hear that?

THE MARSHAL: Yes, your Honor.

THE COURT: That is Room 518 tomorrow morning.

Counsel, did you get that, also? And anybody

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else that is interested in attending there.

I will ask you to start 9:30 tomorrow morning for your own convenience, because I think you would rather come earlier and, hopefully, be able to leave earlier, than vice versa.

You are excused for the evening, but you are under the same instructions that you have always been, which is, not to discuss the case with anybody. There may be even more of an impetus or desire to discuss it with somebody at home. Please don't, ladies and gentlemen. The law requires you to discuss this case only with yourselves, and the reason -- I remind you -- is because it's only the 12 of you, except for us, who have heard all the evidence in this case. Your husband hasn't heard it, your wife hasn't heard it, whoever you live with, your friends, or whoever you are going to see and speak to tonight hasn't heard it; and it would be absolutely an injustice, to say nothing of a violation of the instructions of this Court, to talk about the case with anybody.

So I will be on hand at 9:30 tomorrow morning, although I will not be there unless you require my presence.

Thank you very much. Good night.

I will see you in the morning, gentlemen.

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I would suggest counsel take all the exhibits down to 518.

MR. WILSON: I will hand the exhibits to the clerk, if that is permissible. She will have to handle the notes, in any event.

THE COURT: Whatever you want to do.

(Adjournment to 9:30 a.m., June 18th, 1975.)

Counsel have asked me whether I would clarify the charge with regard to 'aiding and abetting' as to David Grande. I have said I will not do so except if, after asking whether my clarification has answered all their questions, they indicate to me it has not answered all their questions, in which case I will ask them what further questions they have.

MR. KREINCES: May the record reflect both counsel have requested the Court?

THE COURT: Yes.

Bring in the jury.

(Jury enters the courtroom.)

THE COURT: Good afternoon, ladies and gentlemen. Please be seated.

I take it that even though the lights aren't there, you will be able to understand me. Can you hear me all right? I am not used to being in a normal-size courtroom.

I have two notes from you. The first I will have to deal with is Miss Mazemoff.

I am very unhappy about your note, and I don't think there is anything I can do about it except that we will be very glad to get in touch with anybody you want us to get in touch with. I wish I had been aware of this at an earlier time. I would have advised you --

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JUROR NO. 11: I made that appointment after last week when you finally announced probably Friday and at the most Monday.

THE COURT: I understand. I have been fooled -- if that is the word to use -- just as much as the jury has. I was supposed to start the trial of another case. The one I did start this morning I was supposed to try on Monday, and I had to put that off and off.

It is simply impossible. If I had known of your problem, I would have forewarned you. In any event, if you can tell the clerk who she can telephone, she will telephone her immediately and tell her what happened. I will telephone her myself, if you wish.

JUROR NO. 11: There is nothing. It is a meeting where people have been invited in advance, and people will show up and they will have to be sent home.

THE COURT: I am aware of that, and I can't tell you how much I regret it. I will do everything possible to mend your fences for you.

Do you want to tell us now so we won't interrupt the proceedings?

JUROR NO. 11: Children's Services, and the number is 869-8940.

THE COURT: Is there anybody in particular we

should speak to?

JUROR NO. 11: The thing is, the director, who was supposed to be involved, will not be there until 4:00 o'clock.

THE COURT: Shall I ask for the director's secretary?

JUROR NO. 11: You can leave a message, yes. The meeting itself is not until 6:00 o'clock. I have an appointment with the director at 5:00, but I have preparations to do. It's possible, I suppose, that I could get there. I don't know what to say to them.

THE COURT: Who would you speak to if you were going to telephone?

JUROR NO. 11: The director.

THE COURT: Shall we phone at 4:00, then?

JUROR NO. 11: Yes.

THE COURT: Who would that be?

JUROR NO. 11: Mrs. Smith.

THE COURT: On the other note which says:

"Could you clarify "aiding and abetting," and can we have a copy of Counts 1 and 2?"

Let me say, I am having a photocopy made of the entire indictment, and I will send it in to you by the marshal as soon as a copy has been made. We only have the

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original down here and I don't want to take a chance on the original getting lost or marked in any way.

As far as "aiding and abetting" is concerned, I will read you my charge again and then I will see if it answers all your questions; and if it doesn't answer your question, then you can ask specific, further questions.

I told you that in addition to relying on the earlier Acts of Congress, which I had mentioned, the Government is also relying on Title 18, United States Code, 62, which says that:

Whoever commits an offense against the United States, or whoever aids and abets in doing so, is punishable as if he were a principal.

And I went on to say that it is not only a crime to commit a crime, but it is also a crime to aid or induce another person to commit a crime.

I then went on to say that in order to find that a defendant had aided and abetted another person in the commission of the crime, you must find that the aider or abettor, beyond a reasonable doubt, associated himself with the crime or criminal venture; that he participated in it as something which he wished to bring about or that he sought by his action to make the crime succeed.

And I said that to find a defendant guilty of

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aiding and abetting, you must, of course, find something more than mere knowledge on his part that a crime is being committed, for a mere spectator at a crime is not a participant. For example, if you were walking along the street and you saw somebody assaulting somebody else, you would not be an aider and abettor merely because you were present and witnessed what was happening.

On the other hand, if you were with another person and you saw somebody that you would like to have assaulted yourself and you said to the person that you were with, "Go ahead and hit him," and stood by and encouraged and cheered him on, so to speak, you could be guilty of aiding and abetting.

I want to make that distinction.

But in order to convict as an aider or abettor, it is not necessary that you find that the defendant himself actually did all the acts.

In this case, for example, you don't need to find that both defendants threatened. You could find that one threatened and that another urged him to do so, paid him to do so. I am saying if you infer such things, you could find that there was aiding and abetting.

If a defendant caused an act to be done which, if directly performed by him, would be an offense against

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the United States if he had done it himself, then he would be guilty as an aider and abettor.

Does the repetition of those instructions, plus what else I have said, answer the questions that you have in your mind?

JUROR NO. 7: Yes.

THE COURT: Thank you very much, ladies and gentlemen.

I am going to ask you before you go back, Mr. Ellis, have -- there are at least two and maybe three verdicts that you will have to reach. At least two are on Count 1 and maybe the third would be on Count 2. Have you reached a verdict as to either of the defendants on Count 1? By that, I want to know whether the jury has voted and has unanimously agreed as to a verdict on either defendant on Count 1. Just say yes or no.

THE FOREMAN: No.

MR. KREINCES: May we have a side bar for a moment?

THE COURT: Yes.

(At the side bar.)

MR. KREINCES: I am concerned a little bit about your example, your Honor, in indicating to them they could infer if one urged or one paid. Is it possible to give

another example?

THE COURT: What would you like me to give?

MR. KREINCES: I hadn't really thought of an example. Again, a mere spectator at a crime is not a participant.

THE COURT: I will remind them of that again, yes.

(In open court.)

THE COURT: Ladies and gentlemen, there are two points:

First, I remind you, although it seems to me you should know it by now, that merely being a spectator at a crime does not, of course, make anybody guilty of anything.

The second is that, although I gave you certain examples, I did not mean to infer anything one way or another. I was just trying to define things for you. It's for you to decide whether either of the defendants has aided or abetted the other in this case.

Thank you very much. Please continue your deliberations.

(At 2:20 p.m., the jury retired to further deliberate upon a verdict.)

(At 3:00 p.m., the jury returned to the courtroom.)

Certificate of Service

10/10, 1975

I certify that a copy of this brief and appendix has been mailed to the United States Attorney for the Southern District of New York and to counsel for appellant Leo.